

REMARKS

Claims 1-2 and 6-10 are pending in the present application. The rejections are respectfully traversed in light of the following remarks and attached declarations, and reconsideration is requested.

Examiner Interview

Applicants' attorney wishes to express his appreciation to Examiners Burnham and Cuomo for the courtesy of conducting a telephone interview regarding this application on June 15, 2004, in particular discussing the pending Claims 1-2 and 6-9 in view of the cited prior art references, U.S. Patent No. 5,125,472 to Hara, U.S. Patent No. 6,450,573 to Yamaguchi et al., and U.S. Patent No. 6,113,185 to Yamaguchi et al. The Examiners indicated the allowability of Claim 8 over Hara noting that Hara does not seem to disclose or suggest "wherein said cross member comprises a pipe member having a wall flattened from an otherwise cylindrical profile to define a planar surface for engaging the vehicle occupant," as recited in Claim 8. Furthermore, we discussed the possibility of filing declarations from the joint inventors to show sole inventorship by Yamaguchi regarding the subject matter in question.

Rejections In View of Hara

Claims 8 and 9 are rejected under 35 U.S.C. § 102(b) as being anticipated by Hara (U.S. Patent No. 5,125,472).

As noted above, Claim 8 is allowable over Hara. In particular, Applicants submit that Hara only discloses a cylindrical "shaft 17" operably attached to a separate "plate 16" which defines a surface for engaging the vehicle seat. (Hara, column 3, Figures 2-4). Hara does not disclose or suggest that the pipe member itself has a flattened wall portion.

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Furthermore, Applicants submit that Hara only discloses that shaft 17 is used as a pivot shaft and is not adapted to be actuated upward. (Hara, Figure 2-5). Hara does not disclose or suggest a cross member adapted to be actuated upward as claimed by Applicants.

In contrast, Claim 8 recites "a cross member extending between free ends of said arms; and a power unit provided in association with at least one of said support members for actuating said arms and cross member upward so as to selectively raise a front part of said seat bottom in an impact situation such as a vehicle crash; wherein said cross member comprises a pipe member having a wall flattened from an otherwise cylindrical profile to define a planar surface for engaging the vehicle occupant. Because Hara does not disclose or suggest all the limitations as recited in Claim 8, Claim 8 is patentable over Hara.

Claim 9 is dependent on Claim 8 and contains additional limitations that further distinguish it from Hara. Therefore Claim 9 is patentable over Hara for at least the same reasons provided above with respect to Claim 8.

Rejections In View of Yamaguchi et al. (U.S. Patent No. 6,113,185)
and Yamaguchi et al. (U.S. Patent No. 6,450,573)

Claims 1-2 and 6-7 are rejected under 35 U.S.C. § 102(e) as being anticipated by Yamaguchi et al. (U.S. Patent No. 6,113,185 hereinafter "the '185 patent").

Claims 8 and 9 are rejected under 35 U.S.C. § 102(e) as being anticipated by Yamaguchi et al. (U.S. Patent No. 6,450,573 hereinafter "the '573 patent").

A declaration has been previously filed in accordance with 37 C.F.R. § 1.132, declaring that Hiroyoshi Yamaguchi is the sole inventor of all the subject matter disclosed in the '185 patent that is claimed in Claims 1-2 and 6-7 in the present application and that Hiroyoshi Yamaguchi is the sole inventor of the subject matter in Claims 1-2 and 6-7. The affidavit further declares that Hiroyoshi Yamaguchi is the sole inventor of all the subject

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matter disclosed in the '573 patent that is claimed in Claims 8-9 in the present application and that Hiroyoshi Yamaguchi is the sole inventor of the subject matter in Claims 8-9.

Attached are additional declarations in accordance with 37 C.F.R. § 1.132 by the joint inventors of the '185 patent ("Declaration of Tomoharu Ohi"), the '573 patent ("Declaration of Hajime Shono"), and the present application ("Declaration of Eiji Shimizu"), declaring that Hiroyoshi Yamaguchi is the sole inventor of all the subject matter disclosed in the '185 patent that is recited in Claims 1-2 and 6-7 of the present application, that Hiroyoshi Yamaguchi is the sole inventor of all the subject matter disclosed in the '573 patent that is recited in Claims 8-9 of the present application, and that Hiroyoshi Yamaguchi is the sole inventor of the subject matter recited in Claims 1-2 and 6-9 of the present application, respectively.

Therefore, the '185 patent and the '573 patent do not disclose prior art inventions "by another" under 35 U.S.C. § 102(e) for Claims 1-2 and 6-7, and 8-9, respectively, and, thus, should properly be removed as 102(e) prior art references for the corresponding claims. (See MPEP 706.02(b)). Accordingly, Claims 1-2 and 6-7, and 8-9 are patentable over the '185 patent and the '573 patent, respectively.

Allowable Subject Matter

Applicants wish to thank the Examiner for the indication that Claim 10 has been allowed.

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CONCLUSION

For the above reasons, Applicants believe pending Claims 1-2 and 6-9 are now in condition for allowance and allowance of the Application is hereby solicited. If the Examiner has any questions or concerns, the Examiner is hereby requested to telephone Applicants' Attorney at (949) 752-7040.

Certification of Facsimile Transmission

I hereby certify that this paper is being facsimile transmitted to the U.S. Patent and Trademark Office on the date shown below.

Tina K. Kogl
Tina Kavanaugh

July 22, 2004

Respectfully submitted,

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): Yamaguchi, Hiroyoshi; Shimizu, Eiji
Assignee: NHK Spring Co., Ltd
Title: Anti-Submarine Vehicle Occupant Restraint System
Serial No.: 09/976,324 Filing Date: October 12, 2001
Examiner: Sarah C. Burnham Group Art Unit: 3636
Docket No.: AB-1167 US

Irvine, California

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DECLARATION UNDER 37 C.F.R. § 1.132 OF
TOMO HARU OHI

Dear Sir:

I, Tomoharu Ohi, declare as follows:

1. I am a joint inventor of U.S. Patent No. 6,113,185, issued to Yamaguchi et al. (herein referred to as "the '185 patent").
2. The '185 patent describes a submarine preventing mechanism.
3. Hiroyoshi Yamaguchi is the sole inventor of all subject matter disclosed in the '185 patent that is recited in claims 1-2 and 6-7 of the above-identified application.

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SER. NO. 09/976,324

4. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true, and further that the statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under § 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the above application and any patent issued thereon.

Tomoharu Ohi

Tomoharu Ohi

July 19, 2004

Date

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Assignee: NHK Spring Co., Ltd
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Irvine, California

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DECLARATION UNDER 37 C.F.R. § 1.132 OF
HAJIME SHONO

Dear Sir:

I, Hajime Shono, declare as follows:


1. I am a joint inventor of U.S. Patent No. 6,450,573, issued to Yamaguchi et al. (herein referred to as "the '573 patent").
2. The '573 patent describes an anti-submarine vehicle seat device.
3. Hiroyoshi Yamaguchi is the sole inventor of all subject matter disclosed in the '573 patent that is recited in claims 8-9 of the above-identified application.

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Hajime Shono
2004 July 19th
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DECLARATION UNDER 37 C.F.R. § 1.132 OF
EIJI SHIMIZU

Dear Sir:

I, Eiji Shimizu, declare as follows:

1. I am a joint inventor in the above-identified application.
2. Hiroyoshi Yamaguchi is the sole inventor of all subject matter disclosed in the above-identified application that is recited in claims 1-2 and 6-9 of the above-identified application.

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Eiji Shimizu

Eiji Shimizu

July 19, 2004

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